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Supreme Court of the United States

OCTOBER TERM, 1957

No. 670

MILLS MILL, DRAPER CORPORATION AND THE POWELL KNITTING COMPANY, INDIVIDUALLY AND ON BEHALF OF ALL THE TAXPAYERS IN UNA WATER DISTRICT WHO MAY CARE TO COME IN, CONTRIBUTE TO THE COSTS HEREOF AND PARTICIPATE IN THIS ACTION, APPELLANTS,

versus

ERNEST E. HAWKINS, B. R. WEST AND J. T. NORTON, INDIVIDUALLY AND CONSTITUTING THE UNA WATER DISTRICT COMMISSION, APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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STATEMENT

The Appellants in this their brief in opposition to Appellees' Motion to Dismiss or Affirm, respectfully submit that a substantial federal question is presented to this Court by this appeal and is one of public importance.

The specific question presented is designated with particularity under the heading of "Question Presented" on Page 3 of the Jurisdictional Statement and, for brevity's sake, will not be repeated here.

The Question is, for the purpose of this brief, divided into two parts: (a) Does not Act No. 582 of the General Assembly of the State of South Carolina, 1955, 49 Statutes at Large, Page 1400 *et seq.* deny to the area described

therein the equal protection of the laws as is guaranteed by the XIVth Amendment to the Federal Constitution? and (b) Does not Act No. 582 of the General Assembly and its application deprive Appellants of their property without due process of law and deny them equal protection of the laws in contravention of the XIVth Amendment?

Does not Act No. 582 of the General Assembly of the State of South Carolina, 1955, 49 Statutes at Large, Page 1400 et seq., deny to the residents of the area described therein the equal protection of the laws as is guaranteed by the XIVth Amendment to the Federal Constitution?

With reference to the first question, the General Assembly of the State of South Carolina in 1934 enacted a General Statute for the creation, management, control, etc., of water and sewer districts which has been, and is now, in effect and which pertains to the entire State of South Carolina and all its citizens (Act No. 734 of the Acts of the General Assembly of 1934; 49 Statutes at Large of South Carolina, Page 1400 *et seq.*, now titled 59 Sections 601-625, Inclusive, Volume 6, Code of Laws of South Carolina, 1952, Page 76 of Jurisdictional Statement). This general law is similar in most respects to Act No. 582 of the Acts of 1955, hereinafter referred to as the Special Act, with the significant exceptions that under the general law before a water or sewer district can be created a petition requesting the creation must be filed with the Clerk of Court of the County in which such district is proposed to be located * * * "signed by a majority of the resident landowners in the proposed district or by the owners of more than half the land and acreage which will be affected by or assessed for the expense of the proposed improvements, as shown by the tax assessment rolls. The petition shall be accompanied by a plat showing the limits of the proposed district."; the commissioners of the district, when so created, shall be elected

by the qualified voters; the board of commissioners shall not fix rates or charges "until after a public hearing at which all the users of the works and the owners of the properties served, or to be served, thereby shall have an opportunity to be heard concerning the proposed rates," whereas under the Special Act no such petition is required; the freeholders are denied the right to determine the boundaries of the district; the commissioners are to be appointed by the Governor upon the recommendation of the majority of the legislative delegation of Spartanburg County; the commissioners may fix rates to be charged without any public hearing thereon and, in addition, the commissioners by regulation may require any person within the district to use any water system and/or sewer system constructed by the commissioners, which provision does not appear in the general law.

It is submitted that the denial of the substantial right of petition, the right to determine the boundaries, the election of commissioners, and the right to be heard on the fixing of rates to be charged, which rights are granted to all other citizens of the State of South Carolina, in itself denies to the residents and the property owners of the area, created under the Special Act equal protection of the laws afforded all other residents and landowners of the State of South Carolina in derogation of the Federal Constitution and thereby raises a substantial question to be ultimately resolved by this Court. The fact that the Supreme Court of South Carolina has held that the Special Act does not violate a section of the South Carolina Constitution which prohibits special legislation where a general law can be made applicable (no such constitutional prohibition appears in the Federal Constitution) is in no sense controlling or germane to the issue raised by this appeal. Conceding, as we mu. t, in deference to the opinion of the Supreme Court of South Carolina, that the Special Act is not special legis-

lation in conflict with the provisions of Section 34, Article III of the Constitution of South Carolina, 1895, which provides * * * "where a general law can be made applicable, no special law shall be enacted" and further recognizing the general principle that a State Legislature may create a special purpose district, fix and determine its boundaries and benefits and that such action can be assailed under the due process and equal protection clause "only where the legislative action is 'arbitrary, wholly unwarranted, a flagrant abuse and by reason of its arbitrary character a confiscation of particular property' ". *Branson v. Bush*, 51 U. S. 182; 40 S. Ct. 113. Yet, when a state legislature has enacted a general statute, effective throughout the state and affecting every citizen of the state, we submit, that while such general law is in full force and effect, a Special Act denying to the residents in the area created thereby specific substantial rights accorded to all other citizens of the state under the general act denies equal protection of the laws to the residents of the area so created and unconstitutionally discriminates against them. If substantial rights granted to all citizens of the State can be nullified by the legislature in any one small area and, in the case of special legislation, in effect by the local delegation, then, we submit, property rights of the citizens in such area are at the mercy of the whims of the local delegations.

The situation as it now exists is the same, as we view it, as if the General Assembly, when it enacted the general law in 1934, had added a proviso to the effect that the rights, privileges and protection granted under the general law would not apply to a small area in Spartanburg County, describing such area as now described in the Special Act. Had the General Assembly so done we are convinced that there would be no question presented here, for, under such circumstances, the general law would have violated the XIVth Amendment and would, in our opinion, have been so

declared by the Supreme Court of South Carolina. We can see no practical difference between the two situations and respectfully submit that the Special Act deprives the residents and landowners in the area created therein of the equal protection of the laws of the State of South Carolina.

Does not Act No. 582 of the General Assembly and its application deprive Appellants of their property without due process of law and deny them equal protection of the laws in contravention of the XIVth Amendment?

In dividing, for the purpose of this brief, the question into two parts we did so as the first portion of the question relates solely to a matter of law. The second portion deals with a mixed question of law and fact, though the basic legal principles involved have been many times announced by the courts and are no longer in serious dispute.

This Court has held in the case of *Memphis & Charleston Railway Company v. Pace et al.*, 282 U. S. 241, 51 S. Ct. 108, 75 L. Ed. 315, "But, however the tax may be laid, if it be palpably arbitrary, and therefore a plain abuse of power, it falls within the condemnation of the due process clause, *Houck v. Little River District, supra; Valley Farms Co. v. Westchester, supra;* and if it be manifestly and unreasonably discriminatory it falls within the condemnation of the equal protection clause. *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55; *Kansas City Southern Ry. Co. v. Road Improvement District No. 6*, 256 U. S. 658; *Thomas v. Kansas City Southern Ry. Co.*, 261 U. S. 481; *Road Improvement District No. 1 v. Missouri Pacific R. R. Co.*, 274 U. S. 188."

From *Houck v. Little River Drainage District* (1915), 239 U. S. 254, 60 L. Ed. 266, to date, this Court has consistently held and reiterated that when a special or local improvement district, such as a water, sewer, drainage and/or sewer district, is so formed to include property

which is not and cannot be benefited, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation; that if the statute creating such a district and providing for the tax is of such a character that there is no reasonable presumption that substantial justice will be done, but the probability is that the property owners will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand; and that in such districts the purpose and end result of the improvements is to enhance the values of the properties involved, and the costs assessed must bear some relationship to the benefits received. *Myles Salt Co. v. Board of Commissioners of the Iberia & St. Mary Drainage District*, 239 U. S. 478, 60 L. Ed. 392; *Gast Realty & Invest. Co. v. Schneider Granite Co.*, 240 U. S. 55, 60 L. Ed. 523; *Kansas City S. & R. Co. v. Road Improvement District*, 256 U. S. 658, 65 L. Ed. 1151; *Valley Farms Co. v. Westchester County*, 261 U. S. 155, 67 L. Ed. 585; *Chesebro v. Los Angeles County Flood Control District*, 306 U. S. 459, 83 L. Ed. 921; *Atchison, Topeka & Santa Fe Railway Co. v. Public Utilities Commissioners of California*, 346 U. S. 346, 98 L. Ed. 51; and cases therein cited.

It is the position of Appellants that in the creation of the Una Water and Sewer District by the Special Act, the General Assembly of the State of South Carolina did so arbitrarily and without reasonable grounds and the inclusion of the southern one-half, in which Appellants' properties are located, was not justified, but, on the contrary, included for the sole purpose of requiring these Appellants and others similarly situated to bear the expenses in taxation of retiring bonds and interest to defray the costs of the construction of water and sewer lines for the benefit of two small sections in the northern area. Appellants contend that the undisputed facts show that this legislative action was arbitrary, wholly unwarranted and a flagrant

abuse of its powers, and by reason of its arbitrary character a confiscation of Appellants' properties. They earnestly contend and assert that the record so shows. They do not and will not receive any reciprocal benefits or any prospect of benefits to them by the creation of the district and the construction of the water and sewer lines proposed to be installed by the commissioners of the district. A tax to be laid upon them for retiring the bonds and interest is manifestly unreasonably discriminatory and amounts to the confiscation of their respective properties.

We again call attention to the Jurisdictional Statement wherein we have analyzed the facts with relation to the creation of and the conditions existing in the district and will not repeat them here. A fair resume of such facts likewise appears in the dissenting opinion of Mr. Justice Legge appearing in the Appendix to the Jurisdictional Statement. (pp. 32 *et seq.*)

Appellees in their Motion refer at length to the opinion of this Court in the case of *Atchison, Topeka and Santa Fe Railroad Co. v. Public Utilities Commission of California et al.* (1953), 346 U. S. 346, 98 L. Ed. 51. They draw the incorrect conclusion that the instant case comes within certain of the principles announced therein to the effect that costs of improvements in the area need not be distributed on the basis of benefits which will accrue to the property of Appellants and others similarly situated.

We submit, on the contrary, the Special Act which creates the water and sewerage district and authorizes the issuance of a $500,000.00 bond issue to defray the expenses of the creation and installation of water and sewer lines (and the levy of a sufficient tax to retire the bond issue and interest) which improvements and whose purpose and end result is to enhance the value of the property involved by reason of added facilities are such types of improvements as to require the costs which are assessed to bear some re-

lation to the benefits received. It is not a case where the improvements are to be instituted to meet local transportation needs and further safety and convenience.

The legal principles announced in the above case are sufficiently set out in the opinion of the Court as follows: • • • "In this contention, we think the appellants are in error. These were not improvements whose purpose and end result is to enhance the value of the property involved by reason of the added facilities, **such as street, sewer or drainage projects, where the costs assessed must bear some relationship to the benefits received.** *Chesebro v. Los Angeles County Flood Control Dist.*, 306 U. S. 459, 83 L. Ed. 921, 59 S. Ct. 622; *Valley Farms Co. v. Westchester County*, 261 U. S. 155, 67 L. Ed. 585, 43 S. Ct. 261; *Kansas City S. R. Co. v. Road Improv. Dist.*, 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 604, *supra; Gast Realty & Invest. Co. v. Schneider Granite Co.*, 240 U. S. 55, 60 L. Ed. 523, 36 S. Ct. 254.

"Rather, in the cases at bar, the improvements were instituted by the State or its subdivisions **to meet local transportation needs and further safety and convenience, made necessary by the rapid growth of the communities.** In such circumstances, this Court has consistently held that in the exercise of the police power, the cost of such improvements **may be** allocated all to the railroads. *Erie R. Co. v. Board of Public Utility Comrs.*, 254 U. S. 394, 409-411, 65 L. Ed. 322, 333, 334, 41 St. Ct. 169; *Missouri P. R. Co. v. Omaha*, 235 U. S. 121, 127, 59 L. Ed. 157, 160, 35 S. Ct. 82; *Chicago, M. & St. P. R. Co. v. Minneapolis*, 232 U. S. 430, 441, 58 L. Ed. 671, 675, 34 S. Ct. 400; *Cincinnati, I. & W. R. R. Co. v. Connersville*, 218 U. S. 336, 344, 54 L. Ed. 1030, 1064, 31 S. Ct. 93, 20 Ann. Cas. 1206. There is the proper limitation that such alocation of costs must be fair and reasonable. *Nashville, C. & St. L. R. Co. v. Walters*, 294 U. S. 405, 415, 79 L. Ed. 949, 955, 55 S. Ct. 486, and the cases there cited." (Stress added.)

The majority opinion of the Supreme Court of South Carolina refers to the opinion of this Court in *Valley Farms Co. v. County of Westchester*, 261 U. S. 155, 43 S. Ct. 261, and reaches the conclusion therefrom that it is not essential that benefits be direct or immediate to justify an assessment to particular lands. However, in the instant case, it is specifically charged, and we submit incontrovertibly shown, that the inclusion of Appellants' properties in the area created by the Special Act was arbitrarily done by the General Assembly and for improper purposes. Furthermore, Appellants will receive no benefits, real or prospective, and, as pointed out in the Jurisdictional Statement, the majority opinion of the Supreme Court of South Carolina in attempting to declare benefits to be received by Appellants bases the same on a purely speculative basis, and as to these asserted benefits they are of a minute character and the costs assessed against them bear no relationship to the supposed benefits to be received.

The portion of the opinion of this Court in *Browning v. Hooper*, 269 U. S. 396, 70 L. Ed. 330, quoted by Appellees, as we view it, is merely *dicta*. Even if this be not so it still would lend no support to Appellees. In the instant case Appellants are not seeking to be heard on the question of benefits. Nor are they attacking the Special Act because it does not provide for a hearing on benefits. They are attacking it because they and others receive and can receive no benefits and because it denies to and deprives them and all others in the district those very substantial rights, privileges, guarantees and protections afforded to all other property owners, residents and qualified electors of rural areas of South Carolina by the General Law.

We cannot let go unchallenged certain erroneous argumentative statements of fact appearing in Appellees' Motion and more particularly on pages 4 and 5 thereof. The statements hereinafter referred to, (some material and

others immaterial), though not all, either do not appear in the Record or are not borne out by it.

Appellees state that Appellants are corporate entities and none of their executives reside in the area, and none of them appeared as witnesses in behalf of their case. It is submitted that the Record is silent as to the residence of the executives of Appellants when, in truth and in fact, though none of the presidents of Appellants reside in the district, yet certain of their executives do so. Furthermore the stipulation entered into by and between the parties, in effect, admits the allegations of the Complaint to which the executives otherwise would have testified. We call attention to the stipulation. (P. 25 of Transcript of Record wherein, among other things, paragraphs 1, 2 and 3 of the Complaint are expressly admitted, which paragraphs appear on pp. 4, 5, 6 and 7 of the Transcript.)

The stipulation specifically admits, as to each of the Appellants, that they have each installed a water and sewer system with all necessary lateral lines which are in operation and are entirely adequate and do serve all manufacturing and domestic purposes and all buildings located within their respective villages or communities. Therefore any statements made by Appellees to the contrary are without substance. The sewer systems of Appellants discharge into interceptor lines laid out and installed by the W. P. A. (pp. 56, 57 and 58 of Transcript), which interceptors are and have been available to all other residents of the district. Whereas the houses sold by Appellant, Mills Mill, are metered through a master meter, as stated by Appellees, all houses heretofore sold by the two other Appellants are individually metered. The Record is silent with reference to disease among the employees of Appellants or, as a matter of fact, anywhere in the area and we suggest that a statement that the installation of water and sewer lines in the district in general would result in less disease among em-

ployees of Appellants is not warranted where there is no testimony of any diseases among the employees now or in the past. Appellees incorrectly state that since this proceeding commenced Appellants have sold certain of their community mill houses to their employees and thereby relieved themselves of a part of their tax burden. The Record incontrovertibly discloses, and it is so stipulated, that the community houses sold by Appellants were sold prior to the institution of the instant action and the assessed valuation of Appellants' respective properties as set forth in the Record is the valuation after the sale of such houses. Appellees furthermore assume certain speculative benefits to be received by Appellants as a result of the creation and installation of the proposed water and sewer line. We submit that these assumptions are not borne out by the Record.

We note with interest Appellees' treatment of the Order of the trial judge (p. 8 Appellees' Motion) and the majority opinion of the Supreme Court of South Carolina (p. 9 Appellees' Motion). Implicit therein and running throughout is the suggestion that this Court should either dismiss the appeal or affirm the judgment of the Supreme Court of South Carolina on the theory or argument that the trial judge is personally familiar with the conditions existing within the district and the surrounding territory and that the three justices of the Supreme Court who wrote or concurred in the majority opinion are residents of the upper part of the State of South Carolina and, as a result, know and understand the alleged need for improving living conditions in the area (Una Water and Sewerage District) where this particular portion of South Carolina is growing and becoming more industrialized, etc. The suggestion continues that the eminent justices who dissented were not independently possessed of the extrinsic facts known to the trial judge and the other justices and that the minority opinion (p. 10 Appellees' Motion) indicates a lack of knowledge

as to the factual evidence in the Record as to the confiscatory phase of the question. *A fortiori*, the dissenting opinion was based on facts only appearing in the Record whereas the majority opinion was based, in part, on extrinsic facts only known to the writers.

In our willingness to accord the greatest credit possible to Appellees' "local knowledge" treatment of the Order of the trial judge and the majority opinion of the Supreme Court of South Carolina we can but conclude that Appellees intended to call this Court's attention to either of two propositions; that the facts in the Record are of such a complicated nature that only one possessing special knowledge of this somehow unique area can understand them, or that this "local knowledge" gave those justices some substantial additional facts not appearing in the Record. We would prefer to believe that Appellees intended the first proposition, however untenable it may be. So far as we can ascertain there is no section of our State so isolated as to have been untouched by current growth and industrialization.

All salient facts in connection with the creation of and the conditions existing in the area (Una Water and Sewerage District) are clearly set forth by competent testimony in the Record and in no way make the area unique so as to require some special independent knowledge to determine the constitutionality of the act creating the district.

CONCLUSION

We submit:

1. That the Special Act deprives Appellants and all other freeholders, residents and qualified electors of the district of equal protection of the laws and unconstitutionally discriminates against them, in violation of the XIVth Amendment to the Constitution of the United States.

2. That the Special Act denies to Appellants due process of law, in violation of the XIVth Amendment.

3. That the validity of the Special Act under the XIVth Amendment was squarely presented to the Supreme Court of South Carolina and a decision in favor of its validity incorrectly rendered.

4. That the decision on said federal question was necessary to the State Court's determination of the cause; that said determination did not rest on an adequate and independent ground in state law; and that there was no adequate state ground upon which said determination could have rested.

5. That the question is federal and substantial, as has been frequently recognized by this Court in like and similar cases; that the decision of the State Court on the question is *contra* to the decisions of this Court; and that hearing of the question and reversal of the State Court is of paramount public importance.

Respectfully submitted,

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